

REMARKS/ARGUMENTS

In the Office Action the Examiner finally rejected Claims 1-5,10-15,17-19 and 21 under 35 U.S.C. 102(e) as being clearly anticipated by Florio et al (US 6,519,493), and Claims 6-9 and 16 under 35 U.S.C. 103(a) as being unpatentable over Florio et al (US 6,519,493). In response to Applicants' arguments the Examiner stated that Applicants' assertion that operation of a cardiac stimulator in VVI mode is not suggested is without merit. The Examiner then went on to state that Florio et al teaches various internal components of the pacemaker operate to sense the electrical activity of the heart 12, such as the presence of P-waves and R-waves, using electrodes 18 and 22 and to selectively stimulate the heart in response to events sensed within the heart 12 by conducting electrical stimulation pulses to the heart 12 using the electrodes 18 and 22. The Examiner then concluded that the detection of a natural ventricular contraction within a predetermined window would inhibit the pacemaker from generating a ventricular stimulation pulse and that the pacemaker battery would be quickly depleted by continuously pacing the heart and that Energy would be wasted on naturally occurring pacing when it isn't necessary to pace with the pacemaker.

However, Applicants note that the VVI mode of operation is a mode of operation, wherein sensing and stimulation only occur in the ventricle but not in the atrium. Therefore stimulation in a VVI mode means that no P-waves are sensed. In the subject matter of the claims of the present application the stimulation of the ventricle with an overdrive rate shall be performed in a VVI mode. This simply is not taught or suggested by Florio.

To anticipate a claim, a reference must teach all elements of the claim (MPEP § 2131). Florio does not teach operating in a VVI-mode, as recited by Independent Claim 1, when delivering stimulation pulses with an increased (overdrive) pacing rate. Therefore, the Examiner cannot properly maintain a rejection of claims 1-5, 10-15 and 17-19 under 35 U.S.C. § 102(e) with regard to Florio. The Examiner must withdrawal this rejection under 35 U.S.C. § 102(e).

Further, for the reasons stated above Florio does not suggest operation of a cardiac stimulator in VVI mode. Additionally, the sensing and stimulating in the atrium, and inclusion of P-Waves, as described in Florio teaches away from operation of a cardiac stimulator in VVI

mode. One skilled in the art does not arrive at the subject matter as claimed in claims 6-9 and 16 from the disclosure of Florio. Therefore, the Examiner must withdraw the rejection of these claims under 35 U.S.C. § 103(a).

In view of the above, Applicants respectfully submit that Claims 1 through 19 and 21 are in condition for allowance. Applicants encourage the Examiner to call their counsel, James D. Schweikert, at 330-237-4551 to resolve any additional questions that the Examiner may have to place the claims in condition for allowance.

The outstanding Office Action was electronically transmitted on 30 July 2008. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, the Applicants believe that this response is timely filed. However, Applicants hereby make a conditional petition for any extension(s) of time necessary for this response in the event that such a petition is required. The Commissioner is authorized to charge any fee required with the filing of this paper or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

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